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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/000,415	11/02/2001	Thomas Kolze	13199US02	9101
23446	7590	05/15/2006	EXAMINER KUMAR, PANKAJ	
MCANDREWS HELD & MALLOY, LTD 500 WEST MADISON STREET SUITE 3400 CHICAGO, IL 60661			ART UNIT 2611	PAPER NUMBER

DATE MAILED: 05/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/000,415

**Applicant(s)**

KOLZE ET AL.

**Examiner**

Pankaj Kumar

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 28 February 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 18-24 is/are allowed.
- 6) ☒ Claim(s) 1-3, 6-9 and 11-16 is/are rejected.
- 7) ☒ Claim(s) 4, 5, 10 and 17 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 November 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>12/27/2005</u>  | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments filed 2/28/2006 have been fully considered but they are not persuasive.
2. As requested in his response, Kevin Borg was called on 5/8/2006 and he said he may set up a conference call for today to discuss this case. However, no further communication was received.
3. As per claim 1, applicant argues that Vasic in view of the dictionary does not disclose generating at least one error estimate of a signal since Vasic produces estimates of a received signal and probability of error of the estimates and hence the estimates are of the error and not of the signal. This is not persuasive since estimates are of the signal (as even applicant acknowledged that Vasic produces estimates of a received signal) and errors in the estimates are errors in estimating the signal.
4. As per claim 11, applicant argues that Chen does not disclose generating at least one error estimate that is not yet decoded since Chen decodes and the SER value is then measured and not estimated. This is not persuasive for a number of reasons. First, what applicant has claimed is that the method comprises the steps of generating and decoding. Since applicant used the word comprises instead of consists, the order of the steps can be rearranged. Second, error is inherently an outcome of an estimate since exactness could not be achieved. Since SER error is measured, the error is inherently an outcome of an estimate since exactness could not be achieved. Also, the system is inherently estimating since the system knows there is going to be an error because it has an SER error value. Also, since the system could not measure correctly

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the first time and thus had to introduce an SER error value, and there is no check on the system to make sure that even the SER value is exact, the SER error value is also inherently an estimate.

5. Also as per claim 11, applicant argues that Chen does not disclose estimating the error of the whole system and thus it would not be obvious for Chen to teach error estimate. This is not persuasive. First, applicant has not claimed to estimate the error of the whole system or even defined what this means. Second, as explained above, Chen teaches SER error. Error is inherently an outcome of an estimate since exactness could not be achieved. Since SER error is measured, it is inherently an outcome of an estimate since exactness could not be achieved.

Also, since the system knows there is going to be an error because it has an SER error value, the system is inherently estimating. Also, since the system could not measure correctly the first time and thus had to introduce an SER error value, and there is no check on the system to make sure that even the SER value is exact, the SER error value is also inherently an estimate.

### ***Response to Amendment***

#### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 11, 12, 13, 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chen USPN 5,751,725. See prior action for details.

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8. Claims 1, 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vasic USPN 6,691,263 in view of Merriam Webster's Collegiate Dictionary. See prior action for details.

9. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Vasic 6691263 in view of Merriam Webster's Collegiate Dictionary as applied to claim 1 above, and further in view of Olafsson 5910959. See prior action for details.

10. Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vasic 6691263 in view of Webster's as applied to claim 1 above, and further in view of Tiedemann USPN 5,604,730. See prior action for details.

11. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Vasic 6691263 in view of Websters's with Tiedemann as applied to claim 7 above, and further in view of Chen USPN 5,751,725. See prior action for details.

12. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chen USPN 5,751,725 as applied to claim 11 and further in view of Olafsson. See prior action for details.

***Allowable Subject Matter***

13. Claims 4, 5, 10 and 17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

14. Claims 18-20, 21 and 22 are allowed.

15. Claims 23 and 24 are allowed as they are rewritings of claims 4 and 5 rewritten in independent form.

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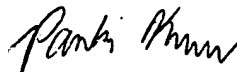
16. See prior action for details.

***Conclusion***

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pankaj Kumar whose telephone number is (571) 272-3011. The examiner can normally be reached on Mon, Tues, Thurs and Fri after 8AM to after 6:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jay Patel can be reached on (571) 272-2988. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Pankaj Kumar  
Patent Examiner  
Art Unit 2611

PK